IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYSHEIA GARVIN,	:	CIVIL ACTION
Plaintiff,	:	
v.	:	NO. 02-2214
CITY OF PHILADELPHIA,	:	
Defendant.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. FEBRUARY 24, 2003

Presently before this Court is the Motion for Summary Judgment filed by the Defendant, the City of Philadelphia ("the City"). The Plaintiff, Tysheia Garvin ("Garvin"), alleges that the City has a policy or custom of condoning and/or acquiescing to the use of excessive force by the City's police officers and that this policy was the cause of her injuries. For the reasons that follow, the Motion will be granted.

I. FACTS

Garvin alleges in her Complaint that on April 24, 2000, at approximately 11:00 a.m., Garvin and another woman began an altercation with one another while in front of the Criminal Justice Center in the City. Shortly after this event, a second altercation erupted between the two women. Garvin further alleges that as a result of the second altercation, an unnamed police officer handcuffed and arrested her. Garvin avers that when she attempted to walk towards her crying child, the unnamed officer grabbed and jerked the handcuffs, throwing Garvin face-first onto the ground, causing serious injury. Garvin contends that the City violated

42 U.S.C. § 1983 and the Fourth Amendment by adopting and maintaining a policy or custom of condoning and/or acquiescing to the use of excessive force. Garvin also avers that the City fails to properly train, supervise and discipline its police officers and that the City is deliberately indifferent to the rights of its citizens.

II. STANDARD

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is proper "if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). Essentially, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-252 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of

producing evidence to establish *prima facie* each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION

In its Motion for Summary Judgment, the City contends that Garvin has failed to establish that the City adheres to a policy or custom of violating the constitutional rights of citizens by allowing the use of excessive force, that the City acts consciously or with deliberate indifference to the manner in which citizens are arrested, and that the City fails to properly train, supervise or discipline its officers. In a § 1983 case, the City cannot be held liable under a theory of *respondeat superior*. Monell v. Dept. of Soc. Serv. of the City of N.Y., 436 U.S. 658, 691 (1978). Instead, Garvin must demonstrate that the violation of her rights was caused by a policy or a custom that has been adopted by the City. Berg v. County of Allegheny, 219 F.3d 261, 275 (3d Cir. 2000); cert. denied, 531 U.S. 1072 (2001). A "[p]olicy is made when a decisionmaker possess[ing] final authority to establish municipal policy with respect to the action issues an official proclamation, policy, or edict." Id. at 275 (internal quotations omitted). "Customs are practices of state officials . . . so permanent and well settled as to virtually constitute law." Id. (internal quotations omitted); Bd. of County Commrs. of Bryan County v. Brown, 520 U.S. 397, 404 (1997). Custom may be established by evidence of knowledge of and acquiescence to the unconstitutional practice by high-level policy-makers. Fletcher v. O'Donnell, 867 F.2d 791, 793-94 (3d Cir. 1989); Wakshul v. City of Philadelphia, 998 F. Supp. 585, 591 (E.D. Pa. 1998). Furthermore, a municipality's failure to train, supervise, or discipline its employees is considered

a policy or custom when such failure amounts to deliberate indifference to citizens' constitutional rights. See City of Canton v. Harris, 489 U.S. 378, 389 (1989).

Here, Garvin alleges that the City has adopted a policy or custom of condoning and/or acquiescing to the use of excessive force and has failed to prevent the use of excessive force. Garvin also avers that the City has failed to properly train, supervise and discipline its police officers regarding the use of excessive force and that the City is deliberately indifferent to the rights of its citizens. To support these allegations of municipal liability, Garvin proffers two pieces of evidence. First, Garvin provides a list of complaints in other civil actions which allege that City police officers have used excessive force. Without more, these complaints merely show that City officers have been accused of using excessive force, but do not establish that these officers actually engaged in the use of excessive force and that the City had knowledge of this practice. Garvin claims that "evidence that Philadelphia police officers had past complaints for similar unconstitutional conduct can be used to establish a fact question regarding the existence of an unconstitutional custom." (Resp. to Summ. J., p. 5). In support of this contention, Garvin cites to Bielevicz v. Dubinon, 915 F.2d 845 (3d Cir. 1990). However, the court in Beilevicz actually states that evidence of similar unlawful *conduct*, not past *complaints*, may be used to as evidence to support a claim of municipal liability. Bielevicz, 915 F.2d at 851.

Likewise, Garvin cites Beck v. City of Pittsburgh, 89 F.3d 966, 973 (3d Cir. 1996) to support her position. In Beck, the court held that five prior complaints for the use of excessive force in less than five years against the officer at issue "may have had evidentiary value." Beck, 89 F.3d at 972. The court specifically stated that this evidence was not "mere isolated events or mere statistics of the number of complaints" but consisted of "actual written civilian complaints

of similar nature . . . containing specific information pertaining to the use of excessive force and verbal abuse by" the officer at issue. Id. at 973. "All but one of the complaints had been investigated by [the Office of Professional Standards] and had been transmitted through the police department chain of command to the Chief of Police. Thus, he had knowledge of the complaints." Id. Garvin's list of civil complaints does not approach this level of evidence, but is akin to "mere statistics of the number of complaints" filed. Id. This list of complaints does not provide a sufficient evidentiary basis on which a reasonable jury could find for Garvin. Anderson, 477 U.S. at 249.

Second, Garvin provides an undated article drafted by the Human Rights Watch ("HRW"), which appears to have been written around 1997 or 1998, discussing the failure of police departments in the United States to correct the problem of the use of excessive force by their officers. Philadelphia is one of the fourteen cities discussed by the HRW in its report. The report lists several incidents from the early 1990's describing the use of excessive force by Philadelphia police officers and details other accountability failings by the police department. However, the report also explains that "[o]n September 4, 1996, in a far-reaching court-monitored agreement, Philadelphia agreed to changes that, if implemented, could make the city's police department a role model for accountability. Although the overdue reforms were only agreed to under the threat of a class-action lawsuit, it is possible that the agreement will prevent serious abuse from recurring." (Resp. to Mot. Summ. J, Ex. B, p. 3). Garvin does not provide any evidence establishing that these changes were not implemented. This hearsay document does not establish that the City has acquiesced to, and thus has established a custom of, the use of excessive force by Philadelphia police officers or that the City has failed to properly

train, supervise and discipline its police officers.

The two pieces of evidence submitted by Garvin in her Response to the Motion for Summary Judgment are insufficient to combat the Motion and establish municipal liability. Therefore, the City's Motion for Summary Judgment must be granted, and the Complaint must be dismissed.

An appropriate Order follows.

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Defendant.	:	

ORDER

AND NOW, this 24th day of February, 2003, upon consideration of the Defendant's Motion for Summary Judgment (Doc. No. 10), and the Response and Reply thereto, it is hereby ORDERED that the Motion is GRANTED and the Complaint is DISMISSED with prejudice. The Clerk of Court is hereby directed to mark this case as closed.

BY THE COURT:

Robert F. Kelly, Sr. J.